

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAITLIN PEYTON, individually and on behalf
of all others similarly situated, :
Plaintiff, :
v.
WALMART, INC., :
Defendant.
-----x

JUL 14 2021
U.S. DISTRICT COURT CLERK'S OFFICE
SOUTHERN DISTRICT OF NEW YORK
ELECTRONICALLY FILED
PC #:
(TC FILED) 10/1/21

ORDER

21 CV 5880 (VB)

On September 30, 2021, defendant moved to dismiss the first amended complaint. (Doc. #16).

Accordingly, it is hereby ORDERED that, by no later than October 12, 2021, plaintiff must notify the Court by letter whether she (i) intends to file a second amended complaint in response to the motion to dismiss, or (ii) will rely on the complaint that is the subject of the motion to dismiss.

If plaintiff elects not to file a second amended complaint, the motion will proceed in the regular course, and the Court is unlikely to grant plaintiff a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in defendant's motion. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility"); accord F5 Capital v. Pappas, 856 F.3d 61, 89–90 (2d Cir. 2017). The time to file opposing and reply papers shall be governed by the Federal Rules of Civil Procedure and the Local Civil Rules, unless otherwise ordered by the Court.

If plaintiff elects to file a second amended complaint, she must file the second amended complaint by no later than 14 days after notifying the Court of her intent to do so. Within 21 days of such amendment, defendant may either: (i) file an answer to the second amended complaint; or (ii) file a motion to dismiss the second amended complaint; or (iii) notify the Court by letter that they are relying on the initially filed motion to dismiss.

Dated: October 1, 2021
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge